Stormwater Policy Subgroup Meeting Summary

December 5, 2003
12:00 – 3:00
Room 500 Cross State Office Building

Attendance: Jeff Austin, Kathi Earley, Liz Rettenmaier, Andy Tolman, Jeff Edelstein, Ginger Davis, Helen Edmonds, Sharon Newman, Chris Olson, John Simon, Dave Kamila, Lucy Quimby, Kat Joyce, Todd Janeski, Hetty Richardson, Jeff Dennis, Don Witherill

Facilitator: Ann Gosline

A report outline was sent to work group members prior to the meeting. The following outline was provided as an updated version at the meeting:

Maine Department of Environmental Protection
DISCUSSION DRAFT Revised December 5, 2003

Improving the Effectiveness of Stormwater Management in Maine

Outline for Report to Maine Legislature
(Report due February 1, 2004)

Executive Summary

To be developed

Introduction

Stormwater management has become a topic of increasing concern in Maine, both environmentally and politically. As progress has been made in cleaning up our State's waters from end-of-pipe wastewater discharges, we're now finding that some of our most significant water quality problems are not from these discharges, but from the cumulative effect of a number of activities ranging from agriculture to development to household management. Pollutants from these activities include toxins, bacteria, sediment and nutrients, and they are often conveyed to our water resources via stormwater runoff.

The Maine Department of Environmental Protection (Department) has been working on stormwater management issues for many years through several programs. The Department's Nonpoint Source Program has invested significant resources in identifying and eliminating sources. Controlling erosion and sedimentation from land use activities has been a focus of the Site Location Law since the early 1970's. However, the focus on stormwater developed more recently. In 1996, the Maine Stormwater Management

Law was passed and, in 2003, new federal requirements went into effect under the National Pollutant Discharge Elimination System (NPDES) stormwater program. The Department's experience administering the Stormwater Law, coupled with the added responsibility of administering the federal program requirements, led Department staff to conclude that we need to re-think how stormwater management should be conducted. The Department introduced a bill to the Legislature in 2003, which led to the following mandate:

> **Sec. 5. Report.** By February 1, 2004, the Department of Environmental Protection shall report to the Joint Standing Committee on Natural Resources with recommendations for improving the effectiveness of storm water management in this State. These recommendations may include draft rules pursuant to the Maine Revised Statutes, Title 38, sections 413 and 420-D to regulate storm water discharges to impaired waters from existing development where necessary to allow restoration of water quality and from new development both during and after construction. The department may also make recommendations concerning other issues such as encouraging the creation of local or regional storm water utility districts and funding storm water management programs at the state and local level, including long-term efforts to inspect, maintain and upgrade or retrofit storm water management systems in impaired or at-risk watersheds or sensitive or threatened regions or watersheds.
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> The department shall consult with state and federal agencies as well as representatives of interested stakeholder groups, including business and environmental groups and the Maine Municipal Association, when developing these recommendations. The Joint Standing Committee on Natural Resources may report out legislation based on the recommendations related to storm water management to the Second Regular Session of the 121st Legislature.

As part of the Stormwater Rules adopted by the Board of Environmental Protection and approved by the Maine Legislature in 1997, the Department has been tasked with developing a list of "most at risk" rivers and streams. This task remained uncompleted up until 2002 because of a lack of sufficient data, and since 2002, because of the desire of many interested parties to have the Department's proposal reviewed through a stakeholder process. The stakeholder process began in the summer of 2002 to help the Department development language for a general permit for discharges from construction activities, in accordance with Federal stormwater requirements from the National Pollutant Discharge Elimination System (NPDES) Program. The stakeholder group completed that work in December 2002, and then was reconvened in May 2003 to help the Department develop this report.

Stakeholder Process

In 2002, the Department convened two separate stakeholder groups on stormwater management. The groups were convened to provide guidance on how we should implement new federal stormwater requirements from the National Pollutant Discharge Elimination System (NPDES) Program. The NPDES Program includes requirements that 28 municipalities, located in four urban areas of the state (southern border, greater

Portland, Lewiston and Bangor) development and implement stormwater management programs. One stakeholder group provided input on how the state should administer this program with the affected municipalities. The NPDES Program also requires that the Department regulate all construction activities that create at least one acre of disturbed land and result in a stormwater discharge from the site.

A second stakeholder group was convened to provide input on how this requirement should be administered, including input on the feasibility of integrating this part of the NPDES Program with the Maine Stormwater Law requirements. Because of a March 2003 deadline for implementing the federal NPDES requirements and the number of issues that the Department raised concerning the state program, the group and the Department concurred that developing an integrated program was not feasible within that timeframe. However, the stakeholders and Department also agreed that discussions should continue on how to address stormwater issues. The second stakeholder group was reconvened in May 2003 and has met monthly since that time to assist in developing this report. Participants have included representatives from the groups identified in the Legislative mandate above. A list of participants appears in Appendix 1 *(to be added)*. A significant amount of time in meetings has been spent providing information on how water quality is managed in Maine. Presentations were given on how water quality in streams is assessed, how waters are classified, and the relationship between stream water quality and the amount of development in a watershed.

Stormwater Management Issues

The following issues have been identified that need to be addressed:

- Streams have not yet been added to the "most at risk" list under the Stormwater Law. Department staff has proposed that watersheds of streams that have at least 7% impervious area should be designated "most at risk" as well as those streams determined to be impaired due to urban runoff (see appendix 2). Standards have been proposed (to be included in draft rule).

- The Classification of Maine Waters law, Title 38 MRSA Section 464 (4)(F)(3) provides that "[t]he department may issue a discharge license … for a project affecting a water body in which the standards of classification are not met if the project does not cause or contribute to the failure of the water body to meet the standards of classification." To meet this requirement, applicants proposing to discharge stormwater to waters impaired due to urban development will need to take measures to show that there is no net contribution to the impairment. Cost and technical feasibility have been raised as concerns for meeting this requirement.

- Imposing stricter standards on "most at risk" watersheds, which in most cases will be located in urban areas, will increase development costs in these areas. This has led to a concern that the rules would create an incentive for a developer to relocate to an outlying area, thereby contributing to more sprawl.

- Even if strict standards are imposed on new development in watersheds of impaired waters, water quality will not meet standards, unless discharges from existing development are reduced. DEP is assessing causes of impairment through development of Total Maximum Daily Loads (TMDL) for impaired waters. This process will continue for at least 10 years.

- Current quantity and quality standards in DEP's rules have not been viewed as effective by DEP staff due to the lack of a standard to restrict the total volume of a discharge, and due to the reliance on percentage removal of total suspended solids (TSS).

- Maintenance of stormwater Best Management Practices has been poor to date, according to Department staff, municipal officials and members of the engineering consultant community. The Department lacks sufficient resources to conduct compliance inspections and follow-up with permittees to ensure that maintenance is carried out. Without the needed maintenance, BMPs often become ineffective and in some instances, may do more harm than good.

- The existing Stormwater Law and Rules is seen by many, including DEP Licensing staff, as very complicated and difficult to understand.

Guiding Principles for Management Strategy

The stakeholder group discussed what the underlying principles should be that guide decisions on stormwater management in Maine and reached agreement with the following principles:

- Stormwater standards should result in meaningful protection. They should accomplish protection without unnecessary requirements; they should be achievable, cost-effective and based on good science.

- Stormwater standards should not create an unintended consequence of sprawl, as defined by state policy.

- Stormwater standards should be understandable. They should be comprehensible and written in plain English. They should not be unnecessarily complex.

- Stormwater standards should not conflict with other major environmental initiatives.

Discussion of Options

Regulatory

- Develop stormwater standards that apply equally in all parts of the state where the Stormwater Law applies. This would entail elimination of the "most at risk" and "sensitive or threatened" designations that are currently in the Stormwater Law.

- Apply a base level of standards for all regulated area of the state, but use the existing "most at risk" and "sensitive or threatened" categories to designate the areas where water quality and quantity impacts from new development are of concern, based on both past development and projected future growth. Develop criteria and a list of streams for these categories in keeping with current statutory and rule requirements.

- Develop a permitting threshold in the State's Stormwater Law that is more consistent with the one-acre disturbance threshold in the Federal NPDES Program. This would simplify the question of when I permit is needed and would allow for eventual integration of the state and federal programs.

- Develop quantity and quality standards in the rule that provide better protection than the current peak flow and TSS standards provide, but that also provide options for applicants, particularly for those located in impaired watersheds where they cannot cause or contribute to a water quality violation.

- Develop a provision for reducing standards in impaired watersheds where a local management plan has been approved by the Department, and is being implemented. Allow implementation to be deferred in municipal designated growth zones until financial assistance is available (for a limited time).

- Develop maintenance requirements that will improve the level of maintenance performed by permittees.

- Use the existing Total Maximum Daily Load (TMDL) assessment process to identify significant existing sources of pollutants in impaired watersheds. Regulate those sources using authority of the wastewater discharge law, or seek additional authority under the Stormwater Law.

- Develop outreach material for the regulated community to improve their understanding of what they need to do to comply with state and federal program requirements.

Non-Regulatory

- Provide municipalities with tools for developing local stormwater management programs. The Maine Stormwater Law already provides for delegation of the program to a municipality if an approved local program exists.

- Seek financial assistance for municipalities or watershed districts seeking to develop and/or implement local management programs.

- Conduct a campaign to build the public's knowledge base on stormwater issues.
- Develop information for developers and the consulting community on ways to minimize stormwater impacts through the use of Low Impact Development measures.
- Continue to offer training to a variety of audiences (developers, contractors, consultants, municipal officials) on proper erosion and sedimentation controls.

Recommendations

To be developed

SUGGESTIONS ON THE DRAFT REPORT OUTLINE FROM WORK GROUP MEMBERS

Introduction

- Add a description of the buffer requirement in the Natural Resources Protection Act; how the legislative change took place; and how it relates to the issues in this process.

Stakeholder Process

- Paragraph 1: Add an explanation that discharges are from point sources.

Issues

- Add "Sensitive and Threatened" (first and third bullets)
- Consider clarifying that there is a question about whether there are 2 tests or 1 for an impaired water body where there is a known pollutant. If a pollutant has been identified, is that the only standard that must be met?
- Add discussion on how riparian buffers affect stream health with respect to the amount of impervious area in the watershed.
- TMDL's: Clarify what they are and how they are scheduled. (Don suggested an appendix addressing TMDL's.)
- Quality & Quantity Standards: Explain that everyone is still learning about stream health and effective standards. Change the sentence about the problem with the current standards concerning volume to a concern over the existing peak flow standard being insufficient.
- Second to last bullet: Add that the Department "and most or all municipalities" lack sufficient resources.
- Add that there must be a combined approach including regulatory and non-regulatory efforts, stormwater efforts, and other efforts.
- Add that the existing regulatory framework does not provide the ability to deal holistically with watersheds.

- Add concern that we are not regulating enough of small developments that cumulatively can have significant impact on water quality.

Guiding Principles
- Add introductory language that there may be tension between these principles.
- Decide whether to change to "should not foster" or leave it "should not create" the unintended consequence of promoting sprawl.

Options
- This section needs introductory paragraph.
- Options should follow order of issues section of report.
- Add consider regulating existing development in impaired watersheds.
- Add UAA
- Add "regulating small developments."

It was suggested that the Options section might go in an appendix after the Recommendations and Discussion section.

The subgroup then heard a briefing concerning current thinking on the Quality & Quantity standards. (These standards will be discussed by the full Stakeholder Group at its next meeting.)

The group then discussed the emerging thinking concerning a definition of "sensitive and threatened regions." It was suggested that it may be possible to seek general agreement from the larger stakeholder group on whether regions should be defined by municipal boundary or by watershed. These concepts will be discussed by the full Stakeholder Group at its next meeting.